

D.T.E. 99-61-2

Adjudicatory proceeding regarding the complaint of John Kan concerning the services provided by Qwest Communications.

ORDER OF DISMISSAL

APPEARANCES: John Kan
32 Mooreland Road
Scituate, MA 02066
Petitioner

Damian R. LaPlaca, Esq.
LeBoeuf, Lamb, Greene & MacRae, L.L.P.
260 Franklin Street
Boston, MA 02110
For: QWEST COMMUNICATIONS CORP.
Respondent

I. INTRODUCTION

On March 29, 1999, John Kan (“Complainant”), pursuant to G.L. c. 93, § 108 et seq., filed a complaint with the Consumer Division (“Division”) of the Department of Telecommunications and Energy (“Department”) alleging that Qwest Communications, Inc. (“Qwest” or “Company”) switched his long distance telephone service without authorization.¹ In response to the Department’s inquiry, on April 12, 1999, Qwest submitted a Letter of Authorization (“LOA”) as evidence that the switch in the Complainant’s telephone service was authorized. On June 28, 1999, the Complainant filed a Notice to Challenge LOA (“Notice”), challenging the veracity of the LOA that was provided by Qwest.

On October 6, 1999, pursuant to notice duly issued, the Division conducted an evidentiary hearing. The Complainant did not appear at the hearing. The Company sponsored the testimony of Maria K. Bertacchi, a tariff analyst. On December 10, 1999, the Company filed a Motion to Dismiss (“Motion”) the case claiming that the Complainant did not appear at the hearing to present evidence and that the Department failed to issue an opinion within ten days of the hearing pursuant to G.L. c. 93, § 110.

II. MOTION TO DISMISS

The Company contends that despite having received notice of the hearing, the Complainant failed to appear in support of his complaint (Motion at 1). The Company argues that G.L. c. 93, §§ 108-113 and c. 159, § 12E requires that customers appear at the

¹ Pursuant to 220 C.M.R. § 13.02, any unauthorized change to a customer’s primary interexchange carrier or local exchange carrier is known as “slamming”.

hearing to give testimony in support of their claims (id. at 1). The Company contends that since the Complainant did not appear and present evidence of his case, the credibility of his evidence remains in question and it would be unfair to the Company to admit evidence without the ability to authenticate such evidence (id. at 2). Further, Qwest contends that the Department has failed to issue its decision in this matter within ten business days after the hearing violating G.L. c. 93, § 110(j) (id. at 3-4). Accordingly, Qwest argues that the Department should dismiss this complaint (id. at 4).

III. ANALYSIS & FINDINGS

On June 28, 1999, the Division received the Complainant's Notice stating that the signature providing authorization was a forgery. As a result of this challenge, the Division notified the parties on September 10, 1999, via regular mail, that a hearing in this matter had been scheduled for Wednesday, October 6, 1999. The notice stated that the Department would consider all information and evidence provided by the Company and the Complainant at that time. The notice further stated that "participation is important for a complete review of the issues in dispute." Lastly, the notice requests the parties to contact the Division if they are unable to attend. No such notification from the Complainant is in the record.

The Complainant failed to appear at the hearing on October 6th (Tr. at 4). The Company filed its written Motion on December 10, 1999. The Department concurs with the Company that without the presence of the Complainant during the hearings, the Department is unable to determine the veracity of the claims made against Qwest for the alleged slam. Accordingly, because the Complainant failed to prosecute his case, the case is dismissed and the

Company's Motion is affirmed. In light of the absence of the Complainant, the Department need not address the timing issues raised by the Company in its Motion.

IV. ORDER

Accordingly, after due notice and consideration, it is

ORDERED: that the adjudicatory proceeding regarding the complaint of John Kan concerning the services provided by Qwest Communications is DISMISSED.

By order of the Department,

James Connelly, Chairman

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan Jr., Commissioner

Deirdre K. Manning, Commissioner

Appeals as to matter of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such a petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such a petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).